

**Amendment No. 1 to Amendment 4 to HB1049**

**Hawk  
Signature of Sponsor**

**AMEND Senate Bill No. 999**

**House Bill No. 1049\***

by deleting the following language from Amendment No. 4 (HA 534):

by deleting subsection (b) of § 49-1-1208 in the amendatory language of Section 1.

and substituting instead the following:

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding the following language as a new part:

**49-1-1201.** This part shall be known and may be cited as the “Tennessee Choice & Opportunity Scholarship Act.”

**49-1-1202.** As used in this part, unless the context otherwise requires:

(1) “Department” means the department of education;

(2) “Eligible student” means a student who:

(A) Resides in Tennessee and is zoned to attend or enrolled in a public school that, at the time of the student’s initial application for a scholarship, is identified as being in the bottom five percent (5%) of schools in overall achievement as determined by the performance standards and other criteria set by the state board;

(B) Meets the minimum age requirements specified in § 49-6-3001, with eligibility extending until the student graduates from high school; however, the student must be less than twenty-two (22) years of age by August 15 of each year;

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(C) Is a member of a household whose annual income during the year prior to initial receipt of a scholarship met the requirements for free or reduced price lunch under 42 U.S.C. §§ 1751 et seq.; and

(D) Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives a scholarship under this part; is enrolling in a Tennessee school for the first time; or received a scholarship pursuant to this part in the previous school year;

(3) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under § 49-6-3001;

(4) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(5) "Program" means the Tennessee choice & opportunity scholarship program created by this part;

(6) "Scholarship" means the funds awarded to a parent on behalf of an eligible student pursuant to this part;

(7) "Scholarship student" means an eligible student who is awarded a scholarship pursuant to this part;

(8) "State board" means state board of education; and

(9) "Tuition and fees" means the cost of educating an enrolled student, inclusive of any cost required as a condition of attending the participating school or using its equipment or facilities while participating in or receiving educational training. "Tuition

and fees” also includes operational and facility costs, transportation costs, meal costs, and any additional costs associated with participating in the program or educating students.

**49-1-1203.**

(a) A participating school shall:

(1) Voluntarily agree to participate in the program and enroll eligible students pursuant to this part;

(2) Provide notice, on an annual basis, of intent to participate in the program to the department through completion of an application developed by the department. Such notice shall include the number of available seats by grade level;

(3) Be identified as a category I, II, or III school pursuant to department procedures and state board of education rules and regulations and comply with all health and safety laws or codes that are applicable to such schools;

(4)

(A) For schools identified as category I by the department, annually administer to scholarship students state assessments as provided in part 6 of this chapter or nationally recognized norm-referenced tests, approved by the state board, that measure educational progress; or

(B) For schools identified as category II or III by the department, annually administer to scholarship students state assessments as provided in part 6 of this chapter or nationally recognized norm-referenced tests that measure educational progress, permitted by their appropriate accrediting agency;

(5) Provide the parents of scholarship students the results of their individual student's annual assessments;

(6) In addition to the information derived from the requirements of subdivision (a)(4), provide the department with graduation rates of scholarship students as well as other student information allowing for the aggregation of data as determined and required by the department;

(7) Comply with nondiscrimination policies pursuant to 42 U.S.C. § 1981 and otherwise abide by the school's written admission policy with regard to students who are awarded scholarships under this part. If a scholarship student is not successfully enrolled in a school, the student shall remain eligible to enroll in another participating school;

(8) Not discriminate against students with special education needs who meet the requirements for admission to the school during the enrollment admissions process; however, as a nonpublic school, a participating school is required to offer only those services it already provides to assist students with special needs. If a scholarship student would have been entitled to receive special education services in the public school the student would otherwise be attending, the parent shall acknowledge in writing, as part of the enrollment process, that the parent agrees to accept only services available to the student in the nonpublic school. A participating school may partner with an LEA to provide special education services;

(9) Accept the scholarship as payment in full for the cost of tuition and fees that would otherwise be charged by the school;

(10) Allow scholarship students to remain enrolled in the school for the duration of the school year at no additional cost if the school withdraws from the program during the school year;

(11) Submit to the department a financial audit of the school conducted by a certified public accountant; however, the audit may be limited in scope to records necessary for the department to make scholarship payments to the school. Such audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the department to be expended in a manner inconsistent with this part shall be returned to the state;

(12) Demonstrate financial viability to repay any funds that may be owed to the state by filing with the department, prior to the start of the school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a surety bond payable to the state from a surety, and in an amount determined by the department;

(13) Require any person applying for a position as a teacher or any other position requiring close proximity to children to submit to a criminal background check;

(14) Provide lunch to scholarship students at no cost or at a reduced cost pursuant to the same income qualifications established under the National School Lunch Program; and

(15) Comply with § 49-5-202.

(b) Participation in the program by a school is voluntary, and nothing in this part shall be construed to authorize any additional regulation of participating schools beyond that specifically authorized by this part. A school participating in the program shall not be considered a state actor, or agent of the state or federal government, by virtue of its participation in this program.

(c) The amount of a scholarship awarded to a scholarship student shall not be treated as income or an asset for the purposes of any tax or qualification for any other federal or state grant or program.

**49-1-1204.**

(a) The department shall develop procedures necessary for administering the program. In administering the program, the department shall:

(1) Provide notice to parents of student eligibility and participating schools;

(2) Accept applications from parents of eligible students and award scholarships to eligible students. Each application shall indicate the parent's choice or choices of participating schools;

(3) Determine and approve school and student eligibility and participation pursuant to the requirements of this part. If the number of eligible students who submit applications exceeds the permissible number of scholarships available statewide or the available seats at participating schools for any grade level, the department shall conduct a random selection process to award scholarships that provides each eligible student with an equal opportunity for selection. The department shall give preference to students already enrolled in the participating school and to siblings of such students;

(4) Create a standard application that parents and students interested in the program shall submit to establish eligibility and apply for admission to participating schools; however, nothing shall prohibit or exclude participating schools from requiring supplemental information from applicants or implementing the school's standard admissions policy;

(5) Establish application and participation timelines that will maximize student and school participation;

(6) Remit scholarship payments to participating schools on behalf of scholarship recipients; however, any scholarship awarded under this part shall be the entitlement of the eligible student under the supervision of the student's parent and shall not be construed to be the entitlement of any participating school; and

(7) Annually publish, in compliance with all state and federal student privacy laws, student achievement and progress information for each participating school, which shall include:

(A) Achievement results in the aggregate, including educational progress, for scholarship recipients;

(B) The graduation rate for scholarship recipients; and

(C) The retention rate for scholarship recipients.

(b) The department may suspend or terminate a school's participation in the program, if the department determines the school has failed to comply with the requirements of this part. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program, or if the school otherwise withdraws from the program, scholarship students enrolled at the school may transfer to another participating school without loss of scholarship eligibility and such students shall be given preference for enrollment.

(c) Notwithstanding subsection (b), an eligible student is entitled to one (1) scholarship per school year. If the student voluntarily leaves a participating school for reasons other than suspension or termination of the school by the department, and enrolls in another participating school, neither the student nor the successor participating school shall receive any funds under this part for the payment of tuition and fees for the remainder of the school year. However, if the student enrolls in the LEA in which the

student resides and is zoned to attend, the LEA shall receive the funds that otherwise would have been remitted to a participating school on behalf of the scholarship student.

(d) In compliance with all state and federal student privacy laws, an LEA, in a timely manner, shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

(e) The names or any other information that alone, or in combination, could personally identify specific scholarship recipients shall be treated as confidential and shall not be open to the public. Nothing in this part shall be construed to prevent the department, state board, or participating schools from accessing and utilizing such records as required to fulfill their lawful functions.

**49-1-1205.**

(a) After initial approval by the department as a participating school, a school may continue to enroll additional eligible students through the program; provided, the school demonstrates achievement growth for scholarship students, in the aggregate, at a minimum level of "at expectations," as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter.

(b) If a participating school demonstrates achievement growth for scholarship students, in the aggregate, at a level of "significantly below expectations" for two (2) consecutive years, as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter, the commissioner shall have the authority to suspend or terminate a school's participation in the program. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or



terminated from the program pursuant to this subsection, scholarship students enrolled at the school may transfer to another participating school without loss of eligibility and such students shall be given preference for enrollment.

**49-1-1206.**

(a) The annual amount to which an eligible student is entitled under this part shall be equal to the lesser of the following:

(1) The cost of tuition and fees that would otherwise be charged by the school; or

(2) The amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the student resides and is zoned to attend.

(b) For the purposes of funding calculations, each scholarship recipient shall be counted in the enrollment figures for the LEA in which the student resides and is zoned to attend. The scholarship funds shall be subtracted from the total state funds otherwise payable to the LEA and shall be paid directly to the participating school.

(c) If the participating school's cost of tuition and fees is less than the amount outlined in subdivision (a)(2), the remaining funds shall be retained by the department and the LEA in which the scholarship recipient resides, with specific amounts based on the LEA's state and local funding share under the BEP.

(d) The department shall develop a schedule for payments of scholarship funds to participating schools. If a participating student is enrolled in a participating school for less than the entire school year, the scholarship provided under this part shall be reduced on a prorated basis to reflect the shorter school term.

(e) No federal funds shall be used pursuant to this section.

**49-1-1207.**

(a) The total number of scholarships to be awarded during the pilot project in the Shelby County school system shall be five thousand (5,000) in each school year.

(b) The department shall develop procedures to allocate scholarships among participating schools if the number of available seats exceeds the limitations set forth in subsection (a).

**49-1-1208.**

(a) To address circumstances where the number of eligible students applying for scholarships at a particular participating school in a particular grade exceeds the number of scholarships awarded, the department shall inform parents of eligible students of all available scholarship options and provide an opportunity for parents to apply to other participating schools.

(b) In any application period, if, after all possible matches of eligible students with participating schools have been made, the number of scholarships awarded does not meet the number of scholarships available under this part, the remaining scholarships may be awarded to students who reside in an LEA that contains at least one (1) school in the bottom five percent (5%) of schools in overall achievement as determined by the performance standards and other criteria set by the state board and otherwise meet all other eligibility requirements as set forth in § 49-1-1202(2).

**49-1-1209.** The state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

**49-1-1210.**

(a) Notwithstanding § 49-1-1202(2)(A) and any other provision of this part to the contrary, the Tennessee choice and opportunity scholarship program shall begin in the 2017-2018 school year as a pilot project in the Shelby County school system. During

the pilot project, scholarships shall be awarded only to eligible students residing within the Shelby County school system who otherwise meet the criteria of § 49-1-1202(2) and, if applicable in any period, § 49-1-1208(b).

(b) The purpose of the pilot project shall be to evaluate the effectiveness of the scholarship program before broadening its scope to other school systems. The pilot project shall assess the scholarship program to determine if the program:

- (1) Improves the educational attainment of scholarship students;
- (2) Provides parents and legal guardians a school choice option that is a satisfactory education alternative to the public schools;
- (3) Is well designed so that parents and legal guardians find the processes for applying for and obtaining a scholarship easy to use;
- (4) Has any effect on the education attainment of students who remain in Shelby County schools; and
- (5) Impairs in any way the fiscal capacity of the Shelby County school system to deliver an adequate education to its students.

(c) The office of research and education (OREA) in the office of the comptroller of the treasury, with the assistance of the department of education and the state board of education, shall study the pilot project and report on the effectiveness of the project after the second and fourth years of the program and at the conclusion of the pilot project.

OREA shall determine:

- (1) Whether scholarship students showed gains in student growth;
- (2) Whether the scholarship students' achievement levels increased;
- (3) Whether students who applied for scholarships, but did not receive scholarships and remained in the Shelby County public schools, showed gains in student growth;

(4) Whether achievement levels of students who applied for scholarships, but did not receive scholarships and remained in the Shelby County public schools, increased;

(5) Whether students who did not apply for scholarships and remained in the Shelby County public schools showed gains in student growth;

(6) Whether achievement levels of students who did not apply for scholarships and remained in the Shelby County public schools increased;

(7) Whether there are differences in the following benchmarks for students who received scholarships, who applied for but did not receive scholarships, and who did not apply for scholarships:

(A) Attendance rates;

(B) Rates of retention in a grade;

(C) Dropout rates;

(D) Suspension and expulsion rates;

(E) Graduation rates; and

(F) College going rates;

(8) The level of achievement growth for scholarship students, in the aggregate, for each participating school;

(9) Whether parents and guardians express satisfaction with the schools that their scholarship students attend and the degree to which they are satisfied;

(10) The scholarship retention rate, the number of scholarship students who reenroll in a Shelby County public school, the period of time spent in a participating school before reenrollment, and, if possible, the reason a student reenrolled in the Shelby County system;

(11) The number of schools that cease to be a participating school, the reason for the school exiting the program, and the length of time the school participated in the program;

(12) The number of participating schools in each of the categories I, II, or III, and whether the schools participating are independent private schools or schools that have a connection to a particular religion, doctrine, or faith;

(13) The number of scholarship students enrolled in each type of school;

(14) Whether the number of schools participating in the pilot project is sufficient to provide parents and guardians with a reasonable number of schools from which to make their school choices;

(15) The number of students with special education needs who received scholarships and the services provided to assist students with special needs;

(16) Whether the scholarship process works smoothly or whether legislative or regulatory changes are needed to make the scholarship program work better for parents and guardians, participating schools, and the department of education; and

(17) The effect of the scholarship program on the financial condition of the Shelby County school system.

(d) Gains in student growth and achievement shall be broken down by the subjects tested and shall be shown for subgroups of students as required by the federal government. The benchmarks in subdivision (b)(7) shall also be shown for subgroups of students.

(e) OREA may analyze and report on other data that it finds indicative of the performance of the pilot project in the Shelby County school system.

(f)

(1) To assist OREA with its duties with respect to the pilot project and to inform the general assembly and the public, the department, in addition to the data required under § 49-1-1204(a)(7), shall annually compile the following data for the pilot project:

(A) A list of the participating schools by category I, II, or III;

(B) The number of scholarship students at each participating school by grade and subgroup as required by the federal government;

(C) The participating schools from which scholarship students exited, either in mid-year or at the end of the school year;

(D) The total number of applicants, the number of applicants who were approved for a scholarship, and the number of applicants who received a scholarship and enrolled in a participating school;

(E) The total number of scholarships granted;

(F) The average expenditure per student for scholarships, and the expenditure per participating school for scholarships; and

(G) Other data as requested by OREA.

(2) The department shall submit its annual compilation of data to OREA, the general assembly, the governor, the state board of education, and all LEAs. The compilation may be submitted electronically.

(g) OREA shall submit its reports to the governor, all members of the general assembly, the department of education, the state board of education, and all LEAs. The reports may be submitted electronically; provided, that notice of the reports, either by e-mail or United States mail, is given to all designated recipients.

SECTION 2. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which

can be given effect without the invalid provision or application, and to that end the provisions of this part are severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.